

February 23, 2005

Mr. Lawrence Smith, CPA  
Director, Technical Application & Implementation Activities--FSP  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, CT 06856-5116

Re: January 2005

- Proposed EITF 04-5, *Investor's Accounting for an Investment in a Limited Partnership When the Investor Is the Sole General Partner and the Limited Partners Have Certain Rights*, and
- Proposed FASB Staff Position (FSP) 78-9-a, *Interaction of AICPA Statement of Position 78-9, Accounting for Investments in Real Estate Ventures, and EITF Issue No. 04-5, Investor's Accounting for an Investment in a Limited Partnership When the Investor Is the Sole General Partner and the Limited Partners Have Certain Rights*

Dear Mr. Smith:

One of the objectives that the Council of the American Institute of Certified Public Accountants (AICPA) established for the PCPS Executive Committee is to act as an advocate for all local and regional firms and represent those firms' interests on professional issues, primarily through the Technical Issues Committee (TIC). This communication is in accordance with that objective. These comments, however, do not necessarily reflect the positions of the AICPA.

TIC has reviewed the aforementioned proposals and is providing the following comments for your consideration.

#### GENERAL COMMENTS

TIC appreciates the plain-English style that was used in drafting each of the above proposals. The documents were logically presented and major concepts were expressed in a number of ways to ensure clarity. The examples provide clear and helpful guidance of how to assess individual limited partners' rights under EITF Issue 04-5.

TIC suggests the title of the EITF issue be changed to match its scope. TIC believes the title should include a phrase that would acknowledge the potential application of the EITF to certain limited liability corporations with similar characteristics. TIC members find that, in today's environment, the limited liability corporation is the more commonly

February 23, 2005  
Mr. Lawrence Smith, CPA

used limited liability entity. The limited partnership is much less commonly used for newly established entities. TIC proposes the EITF title be changed to: *Investor's Accounting for an Investment in a Limited Partnership or Similar Entity When the Investor Is the Sole General Partner and the Limited Partners Have Certain Rights.*

TIC agrees with the Board's premise that a sole investor who is general partner in a limited partnership or equivalent should not consolidate the entity if the limited partners have either kickout rights or substantive participating rights.

### SPECIFIC COMMENT

Paragraph 14(d) of the proposed EITF indicates that the limited partners' right (granted by contract or law) to block acquisitions and dispositions of assets greater than 20% of the fair value of the limited partnership's total assets would be considered a protective right that would not overcome the presumption of control by the sole general partner. TIC noted that the proposed EITF would change SOP 78-9, paragraph 9, which implies that blockage rights over significant acquisitions and dispositions would be participatory:

*However, if limited partners have important rights, such as the right to...approve the sale or refinancing of principal assets, or approve the acquisition of principal partnership assets, the partnership may not be under the control, directly or indirectly, of the general partnership interests. [Emphasis added]*

TIC agrees that certain limited partners' rights related to acquisitions and disposals are solely protective in nature. Such protective rights would include the right to approve the disposal of substantially all assets and the right to approve the initial purchase of property in a single property entity.

However, TIC believes that limited partners' approval rights over certain significant acquisitions and disposals may be more indicative of participating rights than protective rights. TIC believes that approval rights over acquisitions and disposals should be considered in relation to the decisions expected to be made in the day-to-day operation of the business and an analysis of the "Factors to Consider" in paragraph 19 of EITF Issue 04-5. They should not be based on a fixed threshold or any bright line that eliminates the exercise of professional judgment. TIC's conclusion is based, in part, on the belief that the 20% threshold for determining protective versus participating rights is too low.

TIC therefore recommends that paragraph 14(d), which identifies protective rights, be amended as follows:

*d. Dispositions of substantially all assets, as well as significant acquisitions and dispositions, as measured in relation to the fair value of the limited partnership's total assets, made outside of the typical operations and transactions of the business*

February 23, 2005  
Mr. Lawrence Smith, CPA

Example 1 in Exhibit 04-5A would be amended in a consistent manner.

TIC appreciates the opportunity to present these comments on behalf of PCPS member firms. We would be pleased to discuss our comments with you at your convenience.

Sincerely,

Stephen M. McEachern, Chair  
PCPS Technical Issues Committee

cc: PCPS Executive and Technical Issues Committees